ISSUE DATE: February 6, 1997

DOCKET NO. P-551,421/PA-95-1420

ORDER APPROVING TRANSFER OF PROPERTY AND AUTHORITY

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey	Chair
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
Mac McCollar	Commissioner
Don Storm	Commissioner

In the Matter of the Joint Petition of U S WEST Communications, Inc. and Northland Telephone Company d/b/a PTI Communications for Approval of Transfer of Property and Authority

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PROCEDURAL HISTORY

On December 22, 1995 U S WEST Communications, Inc. (U S WEST) and Northland Telephone Company d/b/a PTI Communications (PTI) filed a joint petition seeking permission for U S WEST to transfer to PTI its authority to provide local service to 32 non-metropolitan Minnesota exchanges.[1] The petition also sought permission for U S WEST to sell to PTI specified assets, facilities, and operations within or near those exchanges.

On May 1, 1996 U S WEST mailed to every customer in the 32 exchanges the notice and resident poll materials required under Minn. Stat. § 237.231, subds. 2 and 3.

Between July 10 and July 18, 1996 the Commission conducted public hearings, by teleconference, in all 32 exchanges, as required under Minn. Stat. § 237.231, subd. 4.

On September 6, 1996 U S WEST, PTI, the Minnesota Department of Public Service (the Department), and the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) filed a stipulation asking the Commission to approve the proposed transaction, subject to specified conditions. These conditions related chiefly to rates and service quality in the purchased exchanges, and to U S WEST's treatment of the proceeds from the sale.

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[1]The 32 exchanges are Baudette, Beardsley, Beaver Creek, Brewster, Campbell, Clinton, Dundee, Fairfax, Fulda, Gibbon, Graceville, Gunflint Trail, Heron Lake, Hovland, Humboldt, Itasca State Park, Jeffers, Kellogg, Lafayette, Lamberton, Minneota, Orr, Pierz, Preston, Renville, Roseau, Round Lake, Rushmore, Spring Valley, Warroad, Westbrook-Storden, and Wilmont.

Also on September 6, 1996 AT&T Communications of the Midwest, Inc. (AT&T) filed comments on the proposed transaction. AT&T raised concerns about potential access charge increases proposed by PTI, the treatment of U S WEST's gain on the sale, and the transaction's impact on the introduction of competition in the exchanges.

On September 20, 1996 U S WEST and PTI filed reply comments stating that most of the concerns raised by AT&T had been addressed in the stipulation.

On October 4, 1996 AT&T filed comments agreeing that most of its concerns had been addressed and resolved by the stipulation. The company noted, however, that one of the stipulation's terms, U S WEST's agreement to a month-to-month flat rate of $149 for Resolution 4-ISDN, was subject to the Commission's decision in a separate docket, No. P-421/EM-04-1200.

On January 3, 1997 PTI filed supplementary information on its staffing plans for the 32 exchanges.

The matter came before the Commission on January 7, 1997.

FINDINGS AND CONCLUSIONS

I. The Stipulation

The major provisions of the stipulation, copy attached, are summarized below.

A. Provisions Applicable to PTI

PTI agreed to freeze rates in the purchased exchanges at current levels for three years, subject to three exceptions: (1) rate changes resulting from any Department-initiated earnings investigation under Minn. Stat. § 237.081; (2) rate changes ordered by the Commission after any generic intrastate access charge proceeding; (3) rate changes ordered by the Commission to reflect any changes in jurisdictional separations rules.

PTI agreed to continue to calculate intrastate access charges for the 32 exchanges as U S WEST had agreed to calculate them in the applicable generic access charge proceeding[2], unless that agreement was subsequently modified by Commission action.

PTI promised to continue offering all services currently offered, to maintain current local calling areas, and to expand service offerings over the next three years. During the three-year period the company pledged to replace all analog subscriber carrier systems, to provide all-digital

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[2]In the Matter of the Commission Solicitation of Comments Regarding Access Charges, Docket No. P-999/C-93-90.

interoffice toll connections wherever possible, to provide SS7/ISUP signaling in all 32 exchanges, and to offer CLASS services in all 32 exchanges.

PTI stated it would invest some $21.4 million in the purchased exchanges during the first five years and approximately $100 per access line every year thereafter.

PTI agreed to offer employment to all U S WEST employees affected by the purchase and to add enough additional employees to bring the number of total employees within the exchanges to 47.

B. Provisions Applicable to U S WEST

U S WEST agreed, upon completion of the transaction, to record $7.0 million to its Minnesota intrastate depreciation reserve, reducing amounts potentially recoverable from ratepayers by that sum.

The company also agreed to invest $2.7 million in infrastructure improvements in its remaining exchanges between the close of sale and December 31, 1998. These improvements were to include adding SS7 (CLASS) capability in specified exchanges and adding ISDN[3] capability, or a technically superior equivalent, in specified exchanges.

C. Study Area Waivers

In 1984 the Federal Communications Commission (FCC) promulgated a rule freezing local exchange carriers' "study areas," the geographical areas on which carriers base jurisdictional cost separations. Typically, carriers have one study area per state. U S WEST's transfer of these exchanges to PTI would require changing the study area boundaries of both companies, which would require a waiver of the FCC rule.

Since 1995 the FCC has refused to accept waiver petitions without proof that the relevant state commission does not object. All parties to the stipulation agreed that the Commission should certify to the FCC that it does not object to a study area waiver in this case.

II. The Legal Standard

Under Minn. Stat. § 237.231 the Commission cannot approve the proposed sale without making the following findings:

> (1) U S WEST has substantially complied with all applicable service quality rules during the calendar year preceding the sale;
>
> (2) PTI is financially responsible and capable of making the investments necessary to maintain service quality at levels prescribed by Commission rules; and

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[3]Integrated Services Digital Network.

(3) PTI has demonstrated that it has an adequate number of properly trained employees to maintain service quality at required levels.

Minn. Stat. § 231.231, subd. 5.

Under the statute, the Commission must require the buyer to enter into binding commitments to maintain the levels of investment and staffing necessary to comply with quality of service rules. Minn. Stat. § 237.231, subd. 5.

III. Commission Action

The Commission has examined the proposed transaction and has determined it meets the statutory criteria for the reasons set forth below.

A. U S WEST's Service Quality Over Preceding Calendar Year

The statute requires that the selling company provide service in substantial compliance with the Commission's quality of service rules over the preceding calendar year. Minn. Stat. § 237.231, subd. 5. The Commission's telecommunications service quality standards are set forth at Minn. Rules, parts 7810.4900 through 7810.5900. All carriers are required to maintain records demonstrating compliance with these standards. Minn. Rules, part 7810.5000.

The quality of service in the 32 exchanges at issue has not fallen below these standards during the past year. In fact, service quality has generally exceeded these standards, since U S WEST has been operating under an incentive regulation plan setting higher service quality standards than the rules.[4]

Finally, the customer polling required and conducted under Minn. Stat. § 237.231, subd. 3 revealed a high level of customer satisfaction within the 32 exchanges. Some 93.1% of customers commenting on service quality rated it satisfactory or better.

The Commission concludes this transaction meets the first requirement of subdivision 5.

B. PTI's Financial Responsibility and Capability

The statute also requires that the acquiring company have the financial responsibility and capability necessary to maintain service quality at levels prescribed by rule.

PTI clearly has the financial capability to provide service at required quality levels. Both PTI and its parent company, Pacific Telecom, are in strong financial positions, having respective

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[4]In the Matter of U S WEST Communications, Inc.'s Incentive Regulation Plan, Docket No. P-421/EI-89-860.

total assets of $1.7 million and $1.5 billion and stockholders' equity of $743,000 and $750 million. Net income figures are also consistently strong.

Equally clearly, the company has the financial responsibility necessary to maintain high quality service. PTI targets rural and small town markets, has a history of success in those markets, and has committed itself to upgrading the network and infrastructure in the 32 exchanges it proposes to acquire.

For all these reasons the Commission concludes PTI has the financial responsibility and capability required under the second requirement of subdivision 5.

C. Adequacy of PTI's Staffing Plans and Work Force

The statute also requires that the acquiring company demonstrate that it has an adequate number of properly trained employees to provide service meeting the Commission's service quality standards.

Under the stipulation PTI agreed to offer employment to all nine U S WEST employees affected by the purchase and to add enough additional employees to bring the number of total employees within the 32 exchanges to 47. In supplementary information filed on January 3, the company clarified that it will offer its own employees transfer rights to the new Minnesota positions before hiring new employees to staff the positions.

Between the possible retention of the nine employees currently serving the 32 exchanges, and the transfer to those exchanges of PTI employees with small town and rural telecommunications experience, the Commission believes PTI will have an adequate number of properly trained employees to provide high quality service.

The Commission concludes this transaction meets the third requirement of subdivision 5.

D. PTI's Binding Investment and Staffing Commitments

Finally, the statute requires that the Commission ensure that the purchasing company make binding commitments to maintain the level of investment and staffing necessary to comply with the Commission's service quality rules.

As discussed above, the Commission finds PTI's staffing plans appropriate and accepts the company's representation that it will meet or exceed all quality of service rules promulgated by the Commission.

The company's proposed investment levels also assure that it will be able to provide high quality service. PTI has stated it will invest some $21.4 million in the purchased exchanges during its first five years of Minnesota operations and approximately $100 per access line every year thereafter.

During its first three years in Minnesota PTI has pledged to replace all analog subscriber carrier systems in the 32 exchanges, to provide all-digital interoffice toll connections wherever possible, to provide SS7/ISUP signaling in all 32 exchanges, and to offer CLASS services in all 32 exchanges.

The Commission considers these investment and staffing commitments adequate under the statute.

E. Study Area Waivers

The Commission agrees with the parties that it should certify to the FCC it has no objection to the study area waivers necessary for this transaction to proceed.

F. Treatment of U S WEST's Gain From the Sale

The Commission agrees with the parties that ratepayers' interests in U S WEST's gain from the sale of these exchanges is adequately protected by the depreciation adjustment and infrastructure investments negotiated by the parties.

G. Conclusion

For all the reasons set forth above, the Commission concludes U S WEST's sale of these 32 exchanges to PTI meets the requirements of Minn. Stat. § 237.231 and should be approved. The Commission will so order.

ORDER

1. The Commission approves the proposed sale of 32 U S WEST exchanges to PTI and the transfer of their certificates of authority from U S WEST to PTI, subject to the terms and conditions set forth in the attached stipulation.

2. The Commission does not object to the FCC granting the study area waivers necessary for the proposed sale to proceed.

3. PTI shall maintain the levels of investment and staffing necessary to comply with all quality of service rules duly promulgated by the Commission.

4. Before the date the exchanges are transferred, the parties shall notify all customers within the 32 exchanges of the date on which their service provider will change and shall provide those customers with PTI's name, address, and customer service and operations numbers.

5. Before the date the exchanges are transferred, the parties shall file with the Department of Public Service complete and accurate tariff pages reflecting the change of ownership and its effects.

6. Within 10 days of the date of closing, the parties shall file an affidavit of completion with the Commission.

7. Within 30 days of the date of closing, the parties shall file a copy of all accounting transactions used to record the transfer of properties on the books of both companies and all related entries on the books of U S WEST recording the gain on the sale and depreciation adjustments.

8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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